

REMARKS

At the time of the Fifth Office Action dated January 28, 2007, claims 1-10 were pending and rejected in this application. Independent claim 1 has been amended to reverse the changes of the Amendment filed October 29, 2007.

Applicants has cancelled claims 6-10 to remove these claims from further consideration in this application. Applicants are not conceding in this application that those claims are not patentable over the prior art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the present application. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

Since Applicants have amended claim 1 to recite the limitations that were present at the time of the Fourth Office Action dated February 24, 2006, Applicants proceed on the basis that the Examiner maintains the same rejections that the Examiner presented in the Fourth Office Action. Notwithstanding the specifics of the applied rejection, Applicants' traversal also applies to the rejection of claims 1-2, 5-7, and 10 under 35 U.S.C. § 103 for obviousness based upon Upton in view of Radtke, Jeffries, and Homer and to the rejection of 3-4 and 8-9 under 35 U.S.C. § 103 for obviousness based upon Upton in view of Radtke, Jeffries, Homer, and Hartmann.

Applicants respectfully submit that the Examiner has improperly refused to give due consideration to the two Declarations under 37 C.F.R. § 1.131 submitted in the present application.

Actual Reduction to Practice

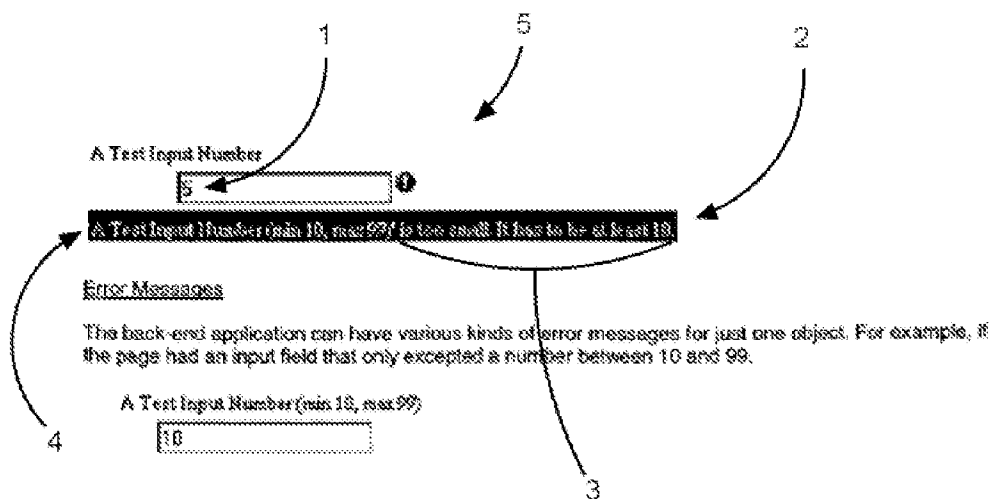
In the Declaration dated December 13-15, 2004 (hereinafter the First Declaration), Applicants declared the following in the fourth enumerated paragraph on page two:

At the time of submitting the Disclosure an experimental prototype of the Invention had been created and work had begun in producing a production version of the Invention.

In response, the Examiner asserted the following on page 7 of the Third Office Action dated September 2, 2005:

This is not persuasive. The Declaration filed on 12/21/2004 fails to provide evidence(s) to show that the prototype was actually reduced to practice. The Declaration provides "a disclosure document" which "describing an embodiment of the Invention". The disclosure includes demonstration of error message displayed in a row below a user input field. However, the disclosure does not provide test results demonstrate that the test was in fact successful as the disclosure described. Therefore, the evidence is not persuasive and the rejection is being maintained. (emphasis added)

Applicants disagree with the Examiner. The "result" of a successful test is found on page 2 of Exhibit A from the First Declaration. This "result" is reproduced below:



Referring to item (1), at least one validation error was detected in a form-based submit based upon a value provided through an input-element in a markup specified form. In this example, the input-element in the markup specified form is represented by the box surrounding "5," the value is "5," and the validation error is that the value is not between 10 and 99.

Referring to item (2), a row is inserted in the markup specified form in a position which is proximate to the input-element, and the row has a background color which differs from other colors which are visible in proximity to the inserted row. In this example, the row is immediately below the input-element (i.e., the box surrounding "5") and has a different background color.

Referring to item (3), error text corresponding to the validation error is selected and inserted in the row. In this example, the text (i.e., "is too small. It has to be at least 10") has been selected and corresponds to the validation error. This text has also been inserted into the row.

Referring to items (4) and (5), an anchor tag has been inserted in the markup specified form in a position which is proximate to the input-element, and the markup specified form is served in a response to the form-based submit with the response referencing the anchor tag. The serving and display of the markup specified form is what is shown and is a result of a successful test of Applicants' claimed invention. Applicants, therefore, respectfully submit that sufficient

evidence has been submitted in the First Declaration to establish that actual reduction to practice of the claimed invention occurred prior to the filing date of Upton.

Constructive Reduction to Practice

In the Declaration dated March 11, 2005 (hereinafter the Second Declaration), Applicants presented facts that established that Applicants' attorneys engaged in reasonable diligence in filing the present application.¹ As declared, during the time period between November 8, 2001 (the date on which the Declaration and Power of Attorney was executed by Applicants) and January 3, 2002 (the filing date of the present application), the application was taken up in the ordinary course of ongoing work in roughly chronological order from when the application was received, and during that time, (20) twenty patent application were handled.

On page 8 of the Fourth Office Action, the Examiner responded to the Second Declaration as follows:

It is noted that diligence must be proven from prior to Oct 18, 2001 (the filing date of Upton et al.) until applicants' reduction to practice (constructive) Jan 03, 2002. Based upon the evidence presented in declarations filed on 12/05/05, there are apparent periods lacking activity and explanation from 10/18/01 to 10/29/01 and 11/08/01 to 01/03/02. Although, applicants points out that there are three holidays and provide a listing of 20 patent applications between 11/08/01 to 01/03/02 period, however, applicants does not explain activities or procedures involving to such applications on this period except such holidays. The declaration fails to provide activities and particular facts associated with time that applicants are relying on to show completion without unexplained time gaps. Since the evidence is not persuasive, the rejection is being maintained.

Applicants respectfully submit that the Examiner is placing a moving target in front of Applicants. The Second Declaration was prepared based upon an interview that Applicants' representative had with the Examiner on September 20, 2005, and also based upon an telephone

¹ See M.P.E.P. § 2138.06. *Bey v. Kollonitsch*, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986) (Reasonable diligence is all that is required of the attorney. Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient. Work on a related case(s) that contributed substantially to the ultimate preparation of an application can be credited as diligence.).

discussion that Applicants' representative had with a USPTO specialist regarding Declarations under 37 C.F.R. § 1.131. Applicants were under the impression that the Second Declaration would cure the alleged deficiencies of the First Declaration with regard to reasonable diligence.

Instead of explaining setting forth an argument as to why the facts presented by Applicants did not establish that Applicants' attorneys engaged in reasonable diligence in filing the present application, the Examiner simply asked for additional information that was not asked for (but could have been asked for) during the personal interview on September 20, 2005, that Applicants' representative had with the Examiner with regard to this very issue.

Applicants are also unclear as to what probative value the "activities or procedures involving to such applications" will have on the issue as to whether or not Applicants' attorneys engaged in reasonable diligence. The fact of the matter is that the total time spent by all persons (e.g., inventors; attorneys and their staff; and examiners/Board and their staff) in taking an inventive concept from when a patent disclosure was generated to when the application issues as a patent is likely less than 1 month or perhaps even less than 1 week (i.e., 168 hours). However, in the case of the present application over 6 1/2 years have passed and yet the application is still being prosecuted. Had the Applicants and the USPTO exhibited perfect diligence with regard to this particular application, a final disposition on this application would have occurred 6 1/2 years ago. However, "perfect diligence" is not required. Instead, only reasonable diligence is required. Applicants' position is that the Examiner has failed to set forth any reasoned arguments to rebut the facts presented by Applicants as to Applicants' reasonable diligence in prosecuting the present application.

Based upon the aforementioned arguments, Applicants have established both actual and constructive reduction to practice prior to the filing date of Upton. Since all of the Examiner's rejections rely upon Upton, Applicants' position is that none of these rejections can be sustained.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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